

## **International Organization for Migration—Written Evidence (PMS0013)**

### **Introduction**

1. The International Organization for Migration (IOM) is pleased to submit its views to the House of Lords EU sub-committee on Home Affairs on the EU Action Plan against Migrant Smuggling.
2. IOM is an intergovernmental organisation established in 1951, committed to the principle that humane and orderly migration benefits migrants and society. The Organization acts to help meet the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration and work towards effective respect for the human rights and well-being of migrants. IOM's mandate allows it to work with migrants, refugees, displaced persons and others in need of migration services or assistance. With over 480 offices worldwide<sup>1</sup> and numerous ongoing projects and programmes, IOM is in a strong position to offer advice to governments and bring best practices from experience in other countries.

### **IOM's Involvement with the Issue of Migrant Smuggling**

3. According to Article 1 (c) of the IOM Constitution, one of the purposes and functions of the Organization is "to provide [...] advisory services on migration questions and other assistance as is in accord with the aims of the Organization". The IOM Strategy, adopted by the IOM Council in 2007, further provides that the Organization will focus on inter alia "assisting States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law" (Point 11 of the Strategy).
4. IOM seeks to address migrant smuggling in a comprehensive way, saving migrants' lives, prosecuting migrant smugglers and promoting more regular migration channels, as well as advancing the socio-economic well-being of migrants. The desired future outcome is that states, international organisations and other actors work towards a situation where migration management approaches, at a minimum, do not exacerbate vulnerabilities; such approaches must instead guarantee protection of the human rights of migrants irrespective of status, while migration takes place within the rule of law, and is aligned with development, social, humanitarian and security interests of states.
5. IOM works towards two key objectives in response to the issue of migrant smuggling: the first is to enable states to more effectively interdict migrant smuggling and save migrants' lives; the second is to foster regional and international cooperation to fight migrant smuggling. IOM's response to migrant smuggling addresses the multiple dimensions of the phenomenon and consists of four key components: legal migration options; practical protection for migrants; interdiction and prosecution of smugglers and development and durable solutions.

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<sup>1</sup> See IOM Snapshot 2015 for more details. Available here: [http://www.iom.int/files/live/sites/iom/files/about-iom/docs/iom\\_snap\\_en.pdf](http://www.iom.int/files/live/sites/iom/files/about-iom/docs/iom_snap_en.pdf)

## **Inquiry into the EU's Action Plan against Migrant Smuggling**

6. IOM welcomes this inquiry by the House of Lords EU sub-committee on Home Affairs which provides an opportunity to feed into the EU Action Plan against Migrant Smuggling 2015-2020. In submitting views to the inquiry IOM's comments will focus on the questions that address the scope of the action plan, the balance between law enforcement and the human rights of migrants, and coherence with the international framework (addressed in questions 1, 2, 5, 6 and 8 respectively).

**Question 1: One of the priorities of the European Agenda on Migration is the prevention of migrant smuggling, with the goal of transforming migrant smuggling networks into “high risk, low return” operations. Are the four objectives of the Action Plan the right ones to achieve this goal? Which, if any, of the proposals in the Action Plan should be prioritised in this context?**

7. IOM welcomes the European Agenda on Migration as a good initial step towards a comprehensive European approach and, in particular, the renewed focus on saving lives. IOM also welcomes the Action Plan on Migrant Smuggling which sets out what specific actions are necessary to implement the counter smuggling part of the European Agenda on Migration.
8. The Action Plan covers most of the critical components of a comprehensive response to migrant smuggling; however IOM would welcome greater balance between the four different objectives. This would involve further expanding the objective that seeks to address the assistance needs of vulnerable smuggled migrants, which is not currently elaborated in detail (see responses to question 6). IOM would also welcome the inclusion of procedures that should be in place to assess whether smuggled migrants are in need of international protection. Furthermore, IOM would encourage the inclusion of further details on the importance of opening more safe, legal ways into the EU, in addition to what is noted in the introductory paragraphs. Expanding this part of the Action Plan represents a significant opportunity to introduce measures that can adequately disrupt the business model of migrant smugglers.
9. IOM welcomes the second objective on improving the gathering and sharing of information, which will allow for a more effective response to smuggling in order to ensure that smuggling operations are disrupted at the earliest opportunity. In addition to data on volumes and routes, and complementary to EU intelligence gathering efforts, IOM recommends that more detailed analysis of human mobility and vulnerabilities could help improve understanding of the motivations for certain routes, such as, for example, the importance of diaspora networks and family reunification along specific corridors.
10. IOM notes, as a positive development, the strengthening of the joint maritime information operation (JOT-MARE) to become a single inter-agency information hub for cases of smuggling by sea; however IOM also recognises an absence in details for a

mechanism of information sharing for other forms of migrant smuggling, such as by land or air.

11. IOM notes that assistance to vulnerable migrants is included as a component of objective three; however IOM would strongly welcome greater detail on the specific measures or mechanisms of assistance to smuggled migrants. This is not elaborated upon in the current wording of the Action Plan. Indeed the one proposal under the sub-heading 'Assistance to Migrants' within this objective refers to a consultation on an EU Directive on residence permits which is very narrow in outlook compared to much broader assistance measures for vulnerable migrants which could be outlined here. Further comments on this point are provided in the response to questions 5 and 6.
12. Objective three entitled, 'Enhance prevention of smuggling and assistance to vulnerable migrants' targets two broad issues in one. IOM would recommend that this objective is separated into two since prevention of smuggling and assistance measures are very distinct issues which require a distinct set of responses<sup>2</sup>. IOM would encourage the two topics being addressed separately and in parallel rather than as two sub-components of one overall objective.
13. As part of the third objective, the Action Plan recognises the need for an effective EU system to return irregular migrants whose asylum applications are rejected. IOM acknowledges the importance of return migration as a necessary element of a well-managed and coherent migration policy; however IOM also notes with concern that the focus is very much on forced return without reaffirming the preference for voluntary return and reintegration as traditionally included in EU policy initiatives, such as the EU Return Directive. IOM considers that further efforts to emphasise the role of reintegration assistance and opportunities to link this to local development initiatives, as a means of promoting community stabilisation, is required.
14. In objective four recognition of the need for stronger cooperation with third countries (as both countries of origin and transit), in order to allow for effective investigation and prosecution of migrant smuggling, is welcomed by IOM. The provision of financial and technical assistance for the development of counter-smuggling strategies, border management systems, police and criminal justice responses to smuggling and improved collection, sharing and analysis of data are particularly positive capacity building developments that IOM supports. However, IOM would also welcome greater partnership language here, in line with the EU's Global Approach to Migration and Mobility, which also considers the needs and interests of third countries in relation to migrant smuggling.
15. With regards to priorities in the Action Plan, IOM considers the provision of assistance to vulnerable migrants as the critical priority; however, as noted above, this is the part of the Action Plan where IOM would also welcome further elaboration and detail to ensure specific and substantive measures are included within the document. Reducing deaths and human suffering as a result of smuggling and protecting the human rights of migrants are almost entirely absent from the Action Plan. Assistance measures for

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<sup>2</sup> To read more about the distinction between prevention of migrant smuggling and protection and assistance measures, please refer to the United Nations Office on Drugs and Crime (UNODC) Toolkit to Combat Smuggling of Migrants, 2010: Tool 8 Protection and assistance measures and Tool 9 Prevention of the smuggling of migrants.

smuggled migrants such as urgent health care, food, non-food items such as hygiene kits, psychological support, temporary shelter, counselling, facilitation of contact with families, and consular and referral services should also form part of the Action Plan in order to ensure it is fully comprehensive and adequately addresses the needs of smuggled migrants, in particular vulnerable groups such as children and women<sup>3</sup>.

**Question 2: According to the European Commission, the Action Plan “should be seen in the broader context of EU efforts to address the root causes of irregular migration”. Does it suggest the correct set of measures to bring this about?**

16. The Action Plan on Migrant Smuggling makes two brief references to the root causes of irregular migration, once in the opening remarks of the second section of the document, and once under the fourth objective ‘Stronger Cooperation with Third Countries’ (on pages 2 and 8 respectively). Neither reference provides significant detail on the specific measures that are recommended to address the root causes of migration; rather, they note that the Action Plan should be seen in the context of, or in connection with, wider EU efforts in this area.
17. IOM would welcome further details on this particular topic, including potential response measures to address key “drivers of irregular migration”. In this regard IOM advocates for the use of “drivers” of migration as the preferred terminology that more adequately reflects the reality that migration is a desirable, necessary and inevitable process to be managed rather than a problem to be solved.
18. IOM’s view is that without investing in large-scale stability and development programmes in communities of origin of smuggled migrants, as well as individual and community level assistance for returning migrants, smuggling will continue to thrive and thousands of lives will continue to be lost. In addition, initiatives aimed at improving economic opportunities, social (including health) services, and community infrastructure are needed in areas prone to economically-induced irregular migration. Similarly, efforts aimed at disaster risk reduction and building community resilience are required to reduce other negative migration drivers, such as conflict, environmental degradation, violence and other man-made and natural disasters<sup>4</sup>.
19. IOM also notes that further research and data initiatives are required to gather quantitative and qualitative data on the profiles, needs, expectations, vulnerabilities and intentions of migrants, in order to improve the evidence base for policies that are designed to address the drivers of irregular migration.
20. IOM also recognises that one of the important drivers of irregular migration is the lack of regular migration and mobility options. IOM advocates for greater access to safe options that include humanitarian avenues as an alternative to reliance on dangerous smuggling movements by land and sea. In addition to the plans to increase resettlement and other forms of admission, regular economic migration channels at all skill levels should be

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<sup>3</sup> See also United Nations Human Rights Commissioner Recommended Principles and Guidelines on Human Rights at International Borders: [http://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](http://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf)

<sup>4</sup> Addressing Complex Migration Flows in the Mediterranean: IOM Response Plan, June 2015, p.4, available upon request.

developed in order to respond to labour market realities and provide alternatives to the use of smuggling routes<sup>5</sup>. This should be seen as a critical element in any effort to reduce the number of people who feel they have no viable option but to turn to smugglers.

21. While the European Agenda on Migration and the Europe 2020 strategy highlight the importance of legal migration and mobility, no new concrete proposals are put forward in the Action Plan on migrant smuggling. Indeed, only very brief mention is made on the importance of opening safer, legal ways into the EU. This point in the Action Plan represents an essential opportunity to introduce measures that can adequately disrupt the business model of migrant smugglers.

**5. Does the Action Plan sufficiently differentiate between migrant smuggling and human trafficking? What is your opinion of the proposal to extend the 2004 Directive on the residence permit issues to third-country nationals who are victims of trafficking in human beings to smuggled migrants?**

22. IOM would recommend the inclusion of a definition of migrant smuggling in the Action Plan, or a reference to other documents from which it may take its definition, in order to provide background to the content of the document. This would further complement the reference that is made later in the document to the focus on migrant smuggling and not trafficking in human beings, which is a “different yet interlinked crime” (page 2), in addition to the footnote which provides information relating to the differences between the two topics, as well as the reference to the two topics being addressed under separate strategies at an EU level.
23. IOM would also recommend the inclusion of a definition of migrant smuggling given the different and concurrent definitions provided for by the EU and by the UN. One point of divergence, for example, is on the profit element of smuggling which is an integral part of the UN Protocol on Smuggling of Migrants by Land, Sea and Air, but is absent from the EU definition as given in the Directive 2002/90/EC and the Framework Decision 2002/946/JHA (the so-called Facilitators Package). Another point of divergence is on the issue of prosecution of smuggling for humanitarian purposes (such as fishermen who are saving lives of smuggled migrants), something that is explicitly excluded from the UN Protocol but not in the case of the EU definition.
24. Under objective three of the Action Plan, ‘Enhanced Prevention of Smuggling and Assistance to Vulnerable Migrants’ and the sub-heading, ‘Assistance to Vulnerable Migrants’, the document refers to a consultation and impact assessment to be launched in 2016 by the European Commission on the possible revision of Directive 2004/81/EC on residence permits issues to victims of trafficking in human beings and to smuggled migrants cooperating with authorities. Further details on this point, such as the specific purpose of the consultation or areas of focus, could better facilitate the provision of informed comment on this topic.

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<sup>5</sup> Ibid.

25. Indeed, the Directive 2004/81/EC already covers both victims of trafficking and those who have been the subject of an action to facilitate irregular immigration who cooperate with the competent authorities; however the key distinction in this Directive is that it provides a mandatory obligation on states to introduce a residence permit for victims of trafficking, whereas states can exercise discretion in deciding to apply the Directive to third country nationals who have been smuggled.
26. As this topic will be addressed in a separate consultation, IOM will make only a summary comment as it relates to the Action Plan. IOM recognises that to effectively investigate migrant smuggling there may be circumstances in which migrants who have been smuggled can provide important witness testimonies to support criminal proceedings (to the police, prosecution and/or judicial authorities); therefore the provision of residence permits can better facilitate this process and this should be supported by assistance measures, such as those provided for in the Directive 2004/81/EC. However, the provision of a residence permit for smuggled migrants cooperating with authorities should not be considered, in and of itself, to be a measure of assistance to smuggled migrants, if the motivation is solely about tackling smugglers as opposed to providing protection or other assistance measures to smuggled migrants who are vulnerable. IOM would therefore recommend a reconsideration of where reference to this issue is made within the Action Plan.

**Question 6: Does current EU action against migrant smuggling, including the actions suggested in the Action Plan, strike the correct balance between law enforcement and the human rights of migrants, including particularly vulnerable migrants such as minors and pregnant women?**

27. IOM's view is that the Action Plan focuses on immediate law enforcement actions, such as destroying vessels, building capacity and information sharing between law enforcement agencies and strengthening third country criminal justice responses to smuggling. IOM considers that the protection and vulnerability concerns of smuggled persons could be better addressed in the Action Plan. By further elaborating on these points the Action Plan could more evenly distribute the focus between law enforcement and the human rights of migrants, particularly vulnerable migrants.
28. As noted in point 15 IOM recommends that more emphasis should be given in the Action Plan to reducing deaths and human suffering during, and as a result of, smuggling in order to protect the human rights of migrants. To ensure the Action Plan is fully comprehensive and adequately addresses the human rights of smuggled migrants, IOM advocates for the inclusion of greater detail on the ways in which states can protect and assist vulnerable smuggled migrants, through the provision of access to information and legal representation, the provision of assistance measures, such as hygiene kits, psychological support, temporary shelter, counselling, facilitation of contact with families, as well as and consular and referral services and so forth.

29. The provision of direct assistance and legal counselling to smuggled migrants arriving by land, sea and air should also include the early identification and referral of vulnerable migrants to local authorities and relevant civil society actors and institutions. IOM suggests that this could be included in the Action Plan with specific reference to the key entry routes and the varying needs that vulnerable migrants may have in each route.
30. Additionally specialist support measures could be tailored to address particular vulnerabilities, such as those of unaccompanied migrant children, migrants vulnerable to trafficking and abuse, migrants with health and psychosocial-related needs, as well as persons in need of international protection, in partnership with national authorities and UNHCR.
31. IOM would also advocate for greater clarity within the Action Plan on the nature of migration flows to the EU through smuggling routes in order to draw attention to the mixed nature of the flows, including those who are in need of international protection, economic migrants and vulnerable migrants.
32. Finally, it is worth noting that the Action Plan stipulates on page 2 that it “should be seen in connection with the on-going work to establish a Common Security and Defence Policy (CSDP) operations to systematically identify, capture and destroy vessels used by smugglers”, something that constitutes a new and not yet tested approach to combating migrant smuggling. IOM is extremely concerned about any steps towards the militarisation of migration governance and urges that impacts are carefully analysed to ensure that the protection of smuggled migrants, refugees and asylum seekers is not compromised<sup>6</sup>.

**Question 8: Are the actions proposed in the Action Plan compatible with the international framework on preventing human smuggling, including the UN Protocol on Smuggling of Migrants by Land, Sea and Air? Do they add to this framework in a coherent and meaningful manner?**

33. The Action Plan only makes reference to the UN Protocol on Smuggling of Migrants by Land, Sea and Air under the fourth objective which relates to stronger cooperation with third countries, whereby partner countries are encouraged to become Parties to the UN Convention on Transnational Organized Crime and the UN Protocol.
34. IOM recommends that an Action Plan addressing an issue such as migrant smuggling could begin by contextualising the international framework and make reference to international provisions throughout the document. This would ensure coherence and consistency between the framework and the Action Plan and allow for a more coordinated EU response that is also embedded in the global response to a phenomenon that affects all countries throughout the world.
35. In this regard IOM would reiterate its recommendation to include a clear definition of smuggling within the Action Plan, in order to allow for compatibility with the UN Protocol to be assessed. As noted above in points 22 and 23 there is currently a lack of full

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<sup>6</sup> Ibid, Page 8.

coherence between the definition provided for by the UN and by the EU in the 'Facilitators Package'; the latter omits the profit element and explicitly excludes mention of assistance to those crossing borders for humanitarian purposes, both of which are integral parts of the UN definition of migrant smuggling.

36. IOM would welcome greater clarity in the definitions used and further consistency with the international framework on combating migrant smuggling, particularly as the Action Plan calls on member states to encourage partner countries to become Parties to the UN Protocol.

**IOM UK**  
**3 September 2015**